

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION

ROGER NEIL SWINDLE

PLAINTIFF

V.

CIVIL ACTION NO.3:12CV19-DAS

MICHAEL J. ASTRUE,
COMMISSIONER OF SSA

DEFENDANT

ORDER AWARDING ATTORNEY FEES

Before the court is the claimant's motion for payment of attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. In these proceedings, the claimant sought judicial review of the final decision of the Commissioner of Social Security, denying a claim for benefits. By judgment dated March 12, 2013, the court remanded this case to the Commissioner for further proceedings. The claimant now seeks attorney's fees under the EAJA as the prevailing party, asserting the Commissioner's position was not "substantially justified." By the motion and attached exhibits, the claimant requests an award of \$ 7,9119.62 in attorney's fees. Claimant's attorney claims an hourly rate of \$ 183.75. The claimant requests \$350.00 from the Judgment Fund as reimbursable cost. The petition includes a request that these funds be paid directly to counsel for the claimant pursuant to an assignment of these monies to counsel. The Commissioner has filed no response to this motion.

As the claimant points out any cost of living adjustment should not normally be an individualized determination, but rather should be uniform. *Baker v. Bowen*, 839 F.2d 1075, 1083 (5th Cir. 1988). This court has recently considered this issue. After considering the rulings in other Social Security cases in this district, and in order to be consistent between cases, this court has decided that \$ 175.00 represents a reasonable hourly rate for 2012 and 2013. Accordingly the requested attorneys fees must be reduced.

Finally, while the court agrees that claimant's counsel has earned these fees and should be reimbursed for costs advanced, the purported assignment is not valid and these monies must be made payable to the claimant. *See* 31 U.S.C. § 3727. For that same reason, the time spent in drafting the assignment will not be allowed.

IT IS ORDERED that the claimant's motion for payment of attorney fees under the EAJA is hereby **GRANTED** in part, and the Commissioner shall pay the claimant \$ 7,455.00 for the benefit of the claimant's attorney. The claimant shall be paid \$ 350.00 for reimbursable costs from the Judgment Fund for the benefit of counsel.

This the 11th day of April, 2013.

/s/ David A. Sanders
UNITED STATES MAGISTRATE JUDGE